IN THE HIGH COURT OF JUDICATURE AT BOMBAY

A.S.

Writ Petition No.8l08 of 2005

Mr Babairam D Jaiswar...Petitioner

vs

Mun Corpn of Gr Mumbai and anr..Respondents

Mr D.D.Singh for petitioner

Mr.A.A.Bhor for respondent no.l

CORAM: S.U.KAMDAR J.

Dated 30.ll.2005

P.C:

l. The present petition is filed challenging the order passed by the Dy Municipal Commissioner dated 2l.8.2005. The subject matter of the petition is premises being room no.7, Chawl No. D/ll, S.G.Barve Nagar, Ghatkopar, Mumbai 400084. The Municipal Corporation is the owner of the said premises and the said premises was given to one Purshottam Jaiswar as a tenant. Said Purshottam Jaiswar expired on or about 9.4.l979. Thereafter petitioner being found in possession of the premises, eviction proceedings were initiated under section l05B of the M M C Act and eviction order was passed by the Estate Officer.

2. The petitioner thereafter preferred an appeal under the provisions of the M M C Act before the Principal Judge of the City Civil Court at Mumbai

and the said appeal was also dismissed. Thereafter the petitioner preferred writ petition to this court being Writ Petition No.l272 of 2004 and by an order dated 23.8.2005 this court directed that the representation of the petitioner dated l8.7.2005 pending with the Dy Municipal Commissioner be considered and a decision should be taken. Accordingly an order was passed to consider the said representation and the petitioner was allowed to be put in possession of the suit premises. Pursuant to the order dated 23.8.2005 passed by this court the Dy Municipal Commissioner has considered the matter and has passed the order of rejection of the representation confirming the eviction order dated 2l.5.2003 passed by the Enquiry Officer.The learned Dy Municipal Commissioner has given detailed reasoning and has come to the conclusion that the petitioner is not entitled to the benefit of the circular under which he is claiming transfer of tenancy being circular dated 7.8.l980 in his representation. The learned Commissioner while passing the order has found that the consent affidavit produced by the deceased is bogus and it has been found that the deceased expired on 7.4.l979 whereas the consent affidavit has been produced for the first time on l3.l2.l986 which is almost after a period of 7 years and the

consent affidavit also contains thumb impression of the deceased whereas the deceased was literate and in fact the tenancy agreement was signed by him and he did not put his thumb impression. In the light of the aforesaid facts the said consent affidavit has been rejected. The learned Commissioner also observed in his order that the petitioner is not in exclusive possession of the premises. He has also come to the conclusion that there are other claimants of the suit premises including Kalavatidevi M Jaiswar who has produced documents in support of her case. However, the Corporation found that Kalavatidevi Jaiswar has not been able to establish her case. The Commissioner has also observed that apart from the petitioner there are various other persons also claiming right over the suit property and claiming to be in possession thereof. It has also been found that substantial illegal extension has been carried out in the said room. Thus after considering the entire matter the petitioner's representation has been rejected by the Dy Mun Commissioner.

3. On the perusal of the record and after hearing the learned counsel for the petitioner, I am of the opinion that there is no reason to interfere with the impugned order passed by the Dy Municipal

Commissioner. After completion of the proceedings for eviction under section l05B of the M M C Act, the petitioner has stuck to the suit premises belonging to the Corporation on one pretext or the other. However, even on fresh consideration by the Dy Municipal Commissioner, it has been found on the material produced before him that the petitioner is not entitled to be in possession nor entitled to transfer of the tenancy as claimed by relying upon the circular dated 7.8.l980. The reasoning of the authority based on the material and record produced cannot be faulted with as the said view is based on the relevant and material evidence produced before the authority. In that view of the matter I do not find any reason to interfere with the impugned order passed by the Dy Municipal Commissioner in writ jurisdiction under Article 227 of the Constitution of India.

. Petition is accordingly dismissed with no order as to costs.

. However, the learned counsel for the petitioner seeks time to vacate the premises. Petitioner is present in court and on instructions from the petitioner, the learned counsel for the petitioner gives undertaking to this court to vacate the

premises on or before 3l.5.2006. The said time to vacate the suit premises is granted subject to his filing undertaking within a period of two weeks from today that he will not alienate, encumber and/or create third party interest or induct any other person in the suit premises and hand over peaceful possession thereof to the Corporation on expiry of the period on 3l.5.2006.